UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

.

DARRELL W. BRUCE, :

: CASE NO. 1:10-CV-02894

Petitioner,

vs. : OPINION & ORDER

: [Resolving Doc. No. <u>8</u>, <u>11</u>]

ROBERT WELCH, Warden

.

Respondent.

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On December 22, 2010, Petitioner Darrell W. Bruce filed a habeas petition pursuant to <u>28</u> <u>U.S.C. § 2254</u>. [Doc. 1.] The matter was referred to Magistrate Judge White on January 6, 2011. [Doc. 3.] On March 29, 2011, Respondent Robert Welch, the Warden of the Toledo Correctional Institution, moved to dismiss the habeas petition for failure to exhaust state court remedies on the petitioner's fourteenth ground for relief, saying that the due process claim was the subject of an appeal pending in state court. [Doc. 8 at 17-18.] On November 2, 2011, Magistrate Judge White issued a Report and Recommendation recommending that this Court deny the Respondent's motion, noting that the Petitioner's direct appeal had been rejected by both the state Court of Appeals and Supreme Courts. [Doc. 11 at 10.]

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a Report and Recommendation to which the parties have made an objection. 28

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U.S.C. § 636(b)(1)(C). Parties must file any objections to a Report and Recommendation within

fourteen days of service. *Id.*; Fed. R. Civ. P. 72(b)(2). Failure to object within this time waives a

party's right to appeal the magistrate's report. Thomas v. Arn, 474 U.S. 140, 145 (1985); United

States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Absent objection, a district court may adopt

the magistrate judge's report without review. See Thomas, 474 U.S. at 149.

In this case, neither party has objected to the Magistrate Judge's recommendation. Moreover,

the Court's review of the public docket in the Petitioner's state court appeal confirms that he has

exhausted state court remedies for the claim. He appealed the due process issue claimed as the

fourteenth ground for habeas relief before the Ohio Court of Appeals, [Doc. 8-42], but the appellate

court rejected his direct appeal, denied his motion for reconsideration, and the Ohio Supreme Court

dismissed his subsequent appeal. See State of Ohio v. Darrell Bruce, CA-10-095064 (Ohio App.

May 5, 2010). Accordingly, the Court **ADOPTS** in whole Magistrate Judge White's Report and

Recommendation and incorporates it fully herein by reference, and **DENIES** the Respondent's

Motion to Dismiss.

IT IS SO ORDERED.

Dated: February 3, 2011

James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

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